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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,676	12/24/2002	Takashima Mitsuru	7266/66308-RDK	2637

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EXAMINER

MARMOR II, CHARLES ALAN

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/018,676	Applicant(s) MITSURU, TAKASHIMA	
	Examiner Charles A. Marmor, II	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 14, 2005 has been entered.

The Examiner acknowledges the amendments to the Specification and to claims 2-5, as well as the addition of new claims 14 and 15. Claims 2-5, 14 and 15 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-5, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, the claim language renders the claim indefinite. The limitations recited at lines 18-20 make it unclear whether the closed compartments are a part of the plurality of closed air type sound sensors including one or more of a non-directional microphone and a pressure sensor or if the closed compartments are merely in communication with the plurality of closed air type sound sensors. Applicant has amended lines 9-11 of the claim to recite that the

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plurality of closed air pressure sensors are in communication with respective closed compartments. However, the limitation “in the closed compartments of the closed air pressure sensors” at lines 18-20 suggests that the closed compartments are part of the closed air pressure sensors.

Regarding claim 3, the claim language renders the claim indefinite. It is unclear whether both a non-directional microphone and a pressure sensor are mounted inside each respective closed compartment or whether at least one closed air pressure sensor formed by at least one of a non-directional microphone and a pressure sensor is mounted inside each respective closed compartment.

Regarding claim 4, the claim language renders the claim indefinite. It is unclear whether both non-directional microphones and pressure sensors are mounted at an end portion of a hose connected to the closed compartments or whether at least one closed air pressure sensor formed by at least one of a non-directional microphone and a pressure sensor is mounted at an end portion of a hose connected to the closed compartments. The limitation at lines 8-9 of Claim 2 “one or more of a non-directional microphone and a pressure sensor” suggests that both a non-directional microphone and a pressure sensor are not necessarily present in the apparatus at all times.

Regarding claim 5, the claim language renders the claim indefinite. The limitations recited at lines 15-17 make it unclear whether the closed compartments are a part of the plurality of closed air type sound sensors including one or more of a non-directional microphone and a pressure sensor or if the closed compartments are merely in communication with the plurality of closed air type sound sensors. Lines 9-10 of the claim recite that the plurality of closed air

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pressure sensors are in communication with respective closed compartments. However, the limitation “in the closed compartments of the closed air pressure sensors” at lines 16-17 suggests that the closed compartments are part of the closed air pressure sensors.

Regarding claim 14, the claim language renders the claim indefinite. It is unclear whether both a non-directional microphone and a pressure sensor are mounted inside each respective closed compartment or whether at least one closed air pressure sensor formed by at least one of a non-directional microphone and a pressure sensor is mounted inside each respective closed compartment.

Regarding claim 15, the claim language renders the claim indefinite. It is unclear whether both non-directional microphones and pressure sensors are mounted at an end portion of a hose connected to the closed compartments or whether at least one closed air pressure sensor formed by at least one of a non-directional microphone and a pressure sensor is mounted at an end portion of a hose connected to the closed compartments. The limitation at lines 7-9 of Claim 5 “one or more of a non-directional microphone and a pressure sensor” suggests that both a non-directional microphone and a pressure sensor are not necessarily present in the apparatus at all times.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 2-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Scanlon ('005). Scanlon teaches acoustic monitoring systems for collecting biomedical information. The systems 12 include a plurality of closed compartments 11 defined by partitions 22. The systems and partitions are made of an airtight, flexible material (see at least column 7, lines 51-54). Each compartment has a variable internal volume and is made of rubber or plastic materials (col. 4, lines 57-60). Each compartment is filled with a fluid and a spring member in the form of foam, suspension structures or partitions. Air is a type of fluid. A closed air type sound transducer 14 in the form of a microphone (col. 1, line 66 - col. 2, line 2) or pressure sensor (col. 4, lines 40-41) detects and converts fluid pressure in each of the compartments into an electric signal. The apparatus can be built into a crib, seat or gurney where the body-contacting surface of the crib, seat or gurney forms a plate-shaped member on the plurality of closed compartments, which may be spaced apart or adjacent to one another. The sound transducer 14 can include a sound transducer in each of the closed compartments (fig. 3) or can be mounted at an end portion of a hose 16 connected to the closed compartments (fig. 2). The air pressures within the closed compartments, when a living body is placed on the closed compartments, are detected by the sound sensor to measure biomedical information such as breathing, heart rate and movement of the living body (col. 2, lines 24-27).

Allowable Subject Matter

6. Claim 5, 14 and 15 apparently would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

No prior art of record teach or fairly suggest a biomedical information collection apparatus, as claimed by Applicant, where each of the closed compartments includes a microscopic pinhole to establish an air leak countermeasure to minimize an influence on the sound sensors.

Response to Arguments

8. Applicant's arguments, see page 6, filed February 14, 2005, with respect to the rejections of claims 2-5 under 35 U.S.C. 112, second paragraph have been fully considered but and are not fully persuasive. While the Examiner acknowledges that Applicant has amended the claim to recited that the closed air pressure sensors are "in communication with" respective closed compartments, limitations recited at lines 18-20 of the claim still recite that the closed compartments are part of the closed air pressure sensors. Applicant's statement that "the amended claim language makes it clear that a non-directional microphone and a pressure sensor are in communication with the plurality of closed air pressure sensors" appears inaccurate and unrelated to the issue. Therefore, the rejections under 35 U.S.C. 112, second paragraph, have been maintained.

9. Applicant's arguments filed June 18, 2004 with respect to the rejections of claims 2-4 under 35 U.S.C. 102(b) have been fully considered but they are not persuasive. Applicant contends that Scanlon does not disclose a plate-shaped member placed on the plurality of closed

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compartments. Applicant further contends that the plate-shaped member 70 is different structurally than the apparatus disclosed by Scanlon. These arguments are not persuasive.

The Examiner respectfully points out that the term “plate-shaped member” does not impart any structure to the member absent any special definition for the term set forth in the detailed description. The member only must be “plate-shaped” in order to meet the limitations of the claims. The word “plate” is defined by *The American Heritage® Dictionary of the English Language, Third Edition* ©1992 as “a smooth, flat, relatively thin, rigid body of uniform thickness.” Since the member is described as “plate-shaped” the member must only have the shape of a plate, i.e. be smooth, flat and relatively thin to meet the claim limitation. The claimed member does not necessarily have to be rigid since the limitation does not recite a rigid plate member. Therefore, the body-contacting surface of the crib, seat or gurney of Scanlon would meet the structural limitations of a plate-shaped member.

Regarding Applicant’s arguments that Scanlon does not contemplate pressure or weight distribution, the claims of the present application are silent with regard to this intended use of the claimed plate-shaped member. By arguing that using the plate-shaped member and the plurality of closed compartments causes the pressure or weight of the organism to be widely spread over the plurality of closed compartments, Applicant appears to be reading limitations from the specification into the claims. In response to applicant's argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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In view of the foregoing, the rejections of claims 2-4 under 35 U.S.C. 102(b) as anticipated by Scanlon are maintained.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

cam
March 3, 2005